

<input checked="checked" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY
JAN 17 2024	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	DEPUTY

Jason Crews  
1515 N Gilbert Rd Ste 107-204  
Gilbert, AZ 85234  
602-295-1875  
Jason.crews@gmail.com

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT ARIZONA  
PHOENIX DIVISION

Jason Crews,

Plaintiff,

vs.

God Family Home Solutions, LLC,  
and  
Fabian Murillo

Defendants.

Case No.: **CV24-00109-PHX-JJT**

Complaint for Violations of:

1. NEGLIGENT VIOLATIONS OF  
THE TELEPHONE CONSUMER  
PROTECTION ACT [47 U.S.C. §227 ET  
SEQ.]
2. WILLFUL VIOLATIONS OF  
THE TELEPHONE CONSUMER  
PROTECTION ACT [47 U.S.C. §227 ET  
SEQ.]

DEMAND FOR JURY TRIAL

///

**COMPLAINT**

**Preliminary Statement**

1  
2  
3 1. Plaintiff Jason Crews ("Plaintiff") brings this action under the Telephone  
4 Consumer Protection Act ("TCPA"), 47 U.S.C § 227, a federal statute enacted in  
5 response to widespread public outrage about the proliferation of intrusive, nuisance  
6 calling practices. See *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012).

7 2. The Defendants in this action God Family Home Solutions, LLC and Fabian  
8 Murillo orchestrated placing at two illegal telemarketing calls using an Automated  
9 Telephone Dialing System ("ATDS") to a number assigned to a cellular service which  
10 was included on the national Do-Not-Call List.

11 3. Plaintiff never consented to receive such calls.

**Parties**

12  
13 4. Plaintiff Jason Crews ("Crews") is and was a resident of Maricopa County,  
14 Arizona at all relevant times, and a resident of this District.

15 5. Defendant God Family Home Solutions, LLC ("GFHS"), incorporated in  
16 California and is in the business of buying and selling real-estate.

17 6. Defendant Fabian Murillo ("Murillo"), a resident of Los Angeles, California,  
18 was at all times relevant the owner and manager and owner of Murillo who directed and  
19 authorized the illegal calls complained of herein.

**Jurisdiction & Venue**

20  
21 7. The Court has federal question subject matter jurisdiction over these TCPA  
22 claims: *Mims v. Arrow Fin. Services, LLC*, 132 S. Ct. 740 (2012).

23 8. The Court has specific personal jurisdiction over the Defendants because they  
24 have repeatedly placed calls to Arizona residents, including the Plaintiff. Defendants  
25 purposely placed calls to Arizona residents.

26 9. The venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial  
27 part of the events or omissions giving rise to the claim occurred in this District, as the calls  
28 to Plaintiff were placed into this District.

**The Telephone Consumer Protection Act**

8. In 1991, Congress enacted the TCPA to regulate the explosive growth of the automated calling industry. In so doing, Congress recognized that “[u]nrestricted telemarketing . . . can be an intrusive invasion of privacy[.]”: Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227).

9. Under the TCPA, an individuals such as Murillo may be personally liable for the acts alleged in this Complaint pursuant to 47 U.S.C. § 217 of the TCPA, which reads, inter alia:

[T]he act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as of that person. 47 U.S.C. § 217 (emphasis added).

10. When considering individual liability under the TCPA, other Courts have agreed that an officer or individual involved in the telemarketing at issue may be personally liable under the TCPA. See, e.g., *Jackson Five Star Catering, Inc. v. Beason*, 2013 U.S. Dist. LEXIS 159985, \*10 (E.D. Mich. Nov. 8, 2013) (“[M]any courts have held that corporate actors can be individually liable for violating the TCPA where they had direct, personal participation in or personally authorized the conduct found to have violated the statute.”) (cleaned up) and *Maryland v. Universal Elections*, 787 F. Supp. 2d 408, 415-16 (D. Md. 2011) (“If an individual acting on behalf of a corporation could avoid individual liability, the TCPA would lose much of its force.”).

11. Murillo personally participated in the complained-of actions by personally directing and authorizing the scripting and selecting of calls to be made, selecting, and orchestrating the calling strategy, including by choosing to use and ATDS system.

**Factual Allegations**

12. To promote their services Defendants also relied on the use of ATDS systems.

13. Plaintiff had no prior business relationship with Defendants.

14. Plaintiff is a "person" as defined by 47 U.S.C. § 153(39).

15. Defendant Fabian Murillo is a "person" as defined by 47 U.S.C. § 153(39).

16. The phone number (602) 295-XXXX ("Cell Number") belongs to Plaintiff.

17. The Cell Number has been on the Do-Not-Call registry since November 7, 2006.

18. Despite this registration, Defendants placed the calls summarized in the following table with an Automated Telephone Dialing Systems ("ATDS").

Date	Time	Caller ID
1/3/24	2:20 PM	(520)650-0377
1/4/24	1:50:00 PM	(818)414-2603

19. The Cell Number is assigned to a cellular phone used exclusively for personal residential purposes.

20. Plaintiff did not consent to receive telephone calls via ATDS.

21. Plaintiff did not consent to telemarketing calls of any kind from Defendants.

22. The Cell Number is not associated with a business.

#### Calls to Plaintiff

23. On or about January 3, 2024, at 2:20 pm, Plaintiff received a call presenting caller ID (520)650-0370 which, because it interrupted Plaintiff while at work, he was unable to answer.

24. On or about January 3, 2024, at 2:21 pm, Plaintiff stopped working and returned the to (520)650-0370.

25. Plaintiff was greeted by an individual who identified themselves as Maya and who asked for Elizabeth.

26. Elizabeth is unknown to Plaintiff, and he informed Maya that they had the wrong number.

27. Maya then immediately asked if Plaintiff had any properties he would like to sell.

1           28. Plaintiff, having received numerous calls in the past from individuals such as  
2 Maya attempting use telemarketing to convince him to sell his property decided to play  
3 along with the caller in order to learn their identity and hopefully put a stop to any future  
4 telemarketing activities.

5           29. Plaintiff requested the name of the company that Maya representative which  
6 she refused provide.

7           30. After failing to get identifying information from Maya, Plaintiff said "I don't  
8 feel very comfortable. You have a nice day and I'll let you, I'll let you, I'll call you back if  
9 I change my mind."

10          31. On or about January 5, 2024, Plaintiff received a telephone call from an  
11 individual who identified themselves as Defendant Murillo.

12          32. Murillo stated that his associate called yesterday.

13          33. Upon information and belief that associate is Maya.

14          34. Plaintiff was surprised to receive the phone call after telling May he wasn't  
15 interested and that he would call her back if he changed his mind.

16          35. Hoping he could ascertain the identity of Murillo, he played along with the  
17 call, once again hoping he could put a stop to the illegal telemarketing calls.

18          36. Murillo discussed purchasing Plaintiffs property or assisting Plaintiff with  
19 listing and selling it on the open market.

20          37. Murillo asked how much money Plaintiff would require to transfer the  
21 property into his name.

22          38. Murillo agreed to send Plaintiff a formal offer.

23          39. Throughout the remainder of that day Murillo sent Plaintiff a formal offer to  
24 purchase his property.

25          40. Throughout the remainder January 4 and periodically through January 6,  
26 2024, Plaintiff and Murillo exchanged emails.

27          41. Once Plaintiff believed he had ascertained Murillo's true identity, he sent  
28 Murillo an email requesting evidence of any consent in their possession evidencing

1 Plaintiff's consent to received telemarketing calls using an ATDS, consent to  
2 telemarketing calls, a copy of Defendants' internal do not call policies, and to be placed  
3 on their internal do not call policy.

4 42. Plaintiff did not receive evidence of consent to received telemarketing calls  
5 using an ATDS.

6 43. Plaintiff believes and therefor avers that this is because no evidence of consent  
7 to received telemarketing calls using an ATDS exists.

8 44. Plaintiff did not receive evidence of consent to received telemarketing calls.

9 45. Plaintiff believes and therefor avers that this is because no evidence of consent  
10 to receive telemarking calls exists.

11 46. Plaintiff did not receive a copy of Defendants' internal do not call policies.

12 47. Plaintiff believed and therefor avers that this is because no internal do not call  
13 policy exists.

14 48. The Plaintiff has been harmed, injured, and damages by the calls including,  
15 but not limited to: reduced device storage space, reduced data plan usage, anger,  
16 frustration, invasion of privacy, more frequent cell phone charging and reduced  
17 enjoyment of Plaintiff's cell phone.

#### 18 **Defendants' Use of an ATDS**

19 49. God Family Home Solutions, LLC's representatives did not know who they  
20 were calling, asking for an individual named Elizabeth who is unknown to Plaintiff.

21 50. God Family Home Solutions, LLC's representatives solicited services did not  
22 target Plaintiff individually.

23 51. The caller did not care who she was speaking to, pivoting to her telemarketing  
24 script, asking if Plaintiff had any real-estate he wanted to sell.

25 52. God Family Home Solutions, LLC's representatives purposefully attempted to  
26 conceal the identity of their company.

27 53. For these reasons, Plaintiff believes the telemarketers used an ATDS to  
28 generate leads for Defendant's debt relief services.

1           54. The calls were conducted using an Automatic Telephone Dialing System  
2 (ATDS). As the Supreme Court recently clarified, the key feature of an ATDS is the  
3 capacity to store numbers to be called using a random or sequential number generator or  
4 to produce numbers to be called using a random or sequential number generator:  
5 *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1167 (2021).

6           55. The Third Circuit recently clarified that “Congress envisioned a broad  
7 understanding of ‘equipment’” that constitutes an ATDS. It also clarified that the analysis  
8 of whether an ATDS was used in violation of the TCPA centers around “whether the  
9 Defendants employ[s] [ATDS] capacities to make automated calls”: *Panzarella v.*  
10 *Navient Sols., Inc.*, 37 F.4th 867, 873, 878 (3d Cir. 2022). In so doing, it held that  
11 Congress intended to “ban all autodialed calls” because Congress “found autodialer  
12 technology to be uniquely harmful”: *Id.* at 879 (cleaned up).

13           56. In enacting the ATDS prohibition, the Third Circuit cited favorably to  
14 Congressional understanding “that telemarketers could transform ordinary computers into  
15 autodialers through minor and inexpensive modifications,” including by “relying on  
16 computerized databases containing telephone numbers during their dialing campaigns”:  
17 *Id.* at 880 (cleaned up). The Third Circuit held that, in passing the TCPA’s ATDS  
18 prohibition, Congress intended to remedy the problems caused by callers using computer  
19 software to dial numbers randomly or sequentially from a list or database: *Id.*

20           57. The system(s) that Defendants used to place the calls to Plaintiff is/are an  
21 ATDS because it would be illogical to dial a number manually, have Plaintiff answer the  
22 phone, and only then connect Plaintiff to a human being.

23           58. Audible pauses, clicks, and beeps are hallmark indicia of ATDS systems. This  
24 supports the inference that Defendants used an ATDS, such as one that “use[s] a random  
25 [or sequential] number generator to determine the order in which to pick phone numbers  
26 from a pre-produced list”: *Facebook*, 141 S. Ct. at 1171 n.7.

27           59. Other courts have held, post-Facebook, that allegations similar to those herein  
28 of the absence of a relationship between the parties, and the random nature of the



1 automation device (such as the ability to randomly generate caller ID numbers), are all  
2 indicia of use of a random or sequential dialing device. This gives rise to the inference at  
3 the pleadings stage that an ATDS was used to make the calls: *Camunas v. Nat'l*  
4 *Republican Senatorial Comm.*, No. 21-1005, 2021 U.S. Dist. LEXIS 100125 at \*11 (E.D.  
5 Pa. May 26, 2021).

6 60. No facts exist here to support the conclusion that Defendants was calling from  
7 a curated list of his past customers. In contrast to a company that dials calls en masse to  
8 multiple individuals from a list of telephone numbers (as here), a company that calls its  
9 existing customers utilizing an imported customer list does not place calls using an  
10 ATDS. Such calling uses a database targeting existing customers' information rather than  
11 computer-generated tables or lists of individuals to be called: *Panzarella*, 37 F.4th at  
12 881–882.

13 61. Plaintiff is ignorant of the exact process by which the system(s) used by  
14 Defendants operates other than by drawing the reasonable inference and alleging that the  
15 system(s) stores or produces telephone numbers randomly or possibly sequentially based  
16 on the facts ascertainable from the calls Plaintiff received, as outlined above. Indeed, as  
17 at least one district court explained, “The newly clarified definition of an ATDS is more  
18 relevant to a summary judgment motion than at the pleading stage”: *Gross v. GG Homes,*  
19 *Inc.*, No. 3:21-cv-00271-DMS-BGS, 2021 WL 2863623, at \*7 (S.D. Cal. July 8, 2021);  
20 accord *Miles v. Mediacredit, Inc.*, No. 4:20-cv- 01186-JAR, 2021 WL 2949565 (E.D. Mo.  
21 July 14, 2021).

22 **Defendants' Conduct Was Knowing and Willing**

23 62. Defendants intentionally called Plaintiff multiple times in order to advertise  
24 their services to Plaintiff

25 63. Defendants knew his actions were in violation of the TCPA and willfully  
26 continued his conduct.

27  
28 ///



**The TCPA Prohibits All Automated Calls to Protected Numbers**

64. The TCPA makes it unlawful "to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automated telephone dialing system or an artificial or prerecorded voice ... to any telephone number assigned to a ... paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the party is charged for the call": 47 U.S.C. § 227 (b)(1)(A)(iii).

65. Congress singled out these services for special protection because Congress realized their special importance in terms of consumer privacy (as is the case with cellular phones): *Barr v. Am. Ass'n of Pol. Consultants Inc.*, 140 S. Ct. 2335, 2356, (2020) (Gorsuch, J. & Thomas, concurring in part and dissenting in part).

66. According to findings by the Federal Communications Commission ("FCC"), which is the agency Congress vested with the authority to issue regulations implementing the TCPA, such messages are prohibited because, as Congress found, automated or prerecorded messages are a greater nuisance and invasion of privacy than live ones, are costly, and are inconvenient.

67. The TCPA provides a private cause of action to persons who receive calls in violation of 47 U.S.C. § 227(b)(1)(A). 47 U.S.C. § 227(b)(1)(3).

68. These causes of action apply to users of any of four protected services (pager, cellular, specialized mobile radio [i.e., radio telephony locator beacon or dispatch system], or another radio common carrier service [i.e., ship-to-shore or air-to-ground]), or any service, including residential, VoIP, and landline services, for which the called party is charged: *Lynn, Monarch Recovery Mgmt. Inc.*, 953 F. Supp. 2d 612, 623, (D. Md. 2013).

69. "Non-Emergency pre-recorded voice or autodialed calls to the destinations enumerated in 47 U.S.C. § 227(b)(1)(A) are permissible only with the prior express consent of the called party."

1        70. U.S.C. § 227(c)(2) states, "No person or entity shall initiate any telephone  
2 solicitation to ... [a] residential telephone subscriber who has registered his or her  
3 telephone number on the National Do-Not-Call Registry of persons who do not wish to  
4 receive telephone solicitations that is maintained by the Federal Government" and defines  
5 "telephone solicitation" as "the initiation of a telephone call or message for the purpose of  
6 encouraging the purchase or rental of, or investment in, property, goods, or services,  
7 which is transmitted to any person..."; U.S.C. § 227(f)(15).

8        71. The FCC also recognized that "wireless customers are charged for incoming  
9 calls whether they pay in advance or after the minutes are used": In re Rules and  
10 Regulations Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278,  
11 Report and Order, 18 FCC Rcd. 14014, 14115, ¶ 165 (2003).

12        72. In 2013, the FCC required prior express written consent for all autodialed or  
13 prerecorded telemarketing calls ("robocalls") to wireless numbers and residential lines.  
14 Specifically, it ordered:

15        [A] Consumer's written consent to receive telemarketing robocalls must be signed  
16 and be sufficient to show that the consumer: (1) received "clear and conspicuous  
17 disclosure" of the consequences of providing the requested consent, i.e., that the  
18 consumer will receive future calls that deliver prerecorded messages by or on  
19 behalf of a specific seller; and (2) having received this information, agrees  
20 unambiguously to receive such calls at a telephone number the consumer  
designates. In addition, the written agreement must be obtained "without  
requiring, directly or indirectly, that the agreement be executed as a condition of  
purchasing any good or service."

21        73. *In the Matter of Rules & Regulations Implementing the Tel. Consumer*  
22 *Prot. Act of 1991*, 27 FCC Rcd. 1830, 1844 (2012) (footnotes omitted).

23        74. 47 C.F.R. § 64.1200 extends 47 U.S.C. § 227 and establishes several  
24 delivery restrictions. It states, "No person or entity may ... [e]xcept as provided ...  
25 initiate any telephone call ... using an automatic telephone dialing system or an artificial  
26 or prerecorded voice."

27        75. 47 C.F.R. § 64.1200(a)(1) specifically protects the following: "emergency  
28 telephone line," "guest room or patient room of a hospital, health care facility, elderly

1 home, or similar establishment," and/or "cellular telephone service." 47 C.F.R. §  
2 64.1200(a)(2) further prohibits entities from "initiat[ing], or caus[ing] to be initiated, any  
3 telephone call that includes or introduces an advertisement or constitutes telemarketing,  
4 using an automatic telephone dialing system or an artificial or prerecorded voice, to any  
5 of the lines or telephone numbers described. . . ."

6 76. The National Do-Not-Call Registry allows consumers to register their  
7 telephone numbers and thereby indicate their desire to not receive telephone solicitations  
8 at those numbers: 47 C.F.R. § 64.1200(c)(2).

9 77. A listing on the Registry "must be honored indefinitely, or until the  
10 registration is cancelled by the consumer or the telephone number is removed by the  
11 database administrator": *Id.*

12 78. The TCPA and implementing regulations prohibit the initiation of  
13 telephone solicitations to residential telephone subscribers whose numbers are on the  
14 Registry and provide a private right of action against any entity making those calls or "on  
15 whose behalf" such calls are promoted: 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(c)(2).

16 79. 47 C.F.R. § 64.1200(d) states, "No person or entity shall initiate any call for  
17 telemarketing purposes to a residential telephone subscriber unless such person or entity  
18 has instituted procedures for maintaining a list of persons who request not to receive  
19 telemarketing calls made by or on behalf of that person or entity." It goes on to establish  
20 specific "minimum standards":

21 (1) "Persons or entities making calls for telemarketing purposes must have a  
22 written policy, available upon demand. . . ."

23 (2) "[P]ersonnel engaged in any aspect of telemarketing must be informed and  
24 trained in the existence and use of the do-not-call list."

25 (3) "If a person or entity making a call for telemarketing purposes . . . receives a  
26 request . . . not to receive calls from that person or entity, the person or entity must record  
27 the request and place the subscriber's name . . . and telephone number on the do-not-call  
28

1 list at the time the request is made ... must honor a residential subscriber's do-not-call  
2 request within a reasonable time from the date such request is made."

3 (4) "A person or entity making a call for telemarketing purposes must provide the  
4 called party with the name of the individual caller, the name of the person or entity on  
5 whose behalf the call is being made, and a telephone number or address at which the  
6 person or entity may be contacted."

7 (5) "A person or entity making calls for telemarketing purposes must maintain a  
8 record of a consumer's request not to receive further telemarketing calls."

9 Claims

10 Count One

11 80. Plaintiff incorporates the foregoing allegations as fully set forth herein.

12 81. The foregoing acts and omissions of Defendants and/or their affiliates,  
13 agents, and/or other persons or entities acting on Defendants' behalf constitute violations  
14 of the TCPA, 47 U.S.C. § 227, by sending calls, except for emergency purposes, to  
15 Plaintiff's telephone which is assigned to a cellular telephone service using an ATDS.

16 82. As a result of their unlawful conduct, Defendants invaded Plaintiff's  
17 personal privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. §  
18 227(b)(3)(B), entitling him to recover \$500 in civil fines for each violation and an  
19 injunction requiring Defendants to stop his illegal calling campaign.

20 83. Plaintiff is also entitled to and does seek injunctive relief prohibiting  
21 Defendants and/or his affiliates, agents, and/or other persons or entities acting on  
22 Defendants' behalf from violating the TCPA, 47 U.S.C. § 227, by making calls or  
23 sending messages, except for emergency purposes, to any number using an artificial or  
24 prerecorded voice in the future.

25 84. Plaintiff is entitled to an award up to \$1500 in damages for each knowing  
26 and willful violations of 47 U.S.C. § 227(b)(3)(B)

27 85. Defendants' violations were willful and/or knowing.

28 ///

**Count Two**

86. Plaintiff incorporates the foregoing allegations as fully set forth herein.

87. Defendants called Plaintiff's private residential telephone number which was registered on the National Do-Not-Call Registry more than thirty-one (31) days prior to the calls, in violation of 47 U.S.C. § 227(c)(3)(F) and 47 C.F.R. § 64.1200(c)(2).

88. As a result of their unlawful conduct, Defendants invaded Plaintiff's personal privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. § 227(c)(3)(F) entitling him to recover \$500 in civil fines for each violation and an injunction requiring Defendants to stop his illegal calling campaign.

89. Plaintiff is entitled to an award up to \$1500 in damages for each knowing and willful violations of 47 U.S.C. § 227(c)(3)(F).

90. Defendants' violations were willful and/or knowing.

**Relief Sought**

WHEREFORE, Plaintiff requests the following relief:

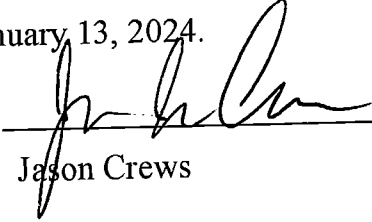
A. Injunctive relief prohibiting Defendants from calling or engaging another party to call telephone numbers using ATDS.

B. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(b)(3).

C. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(c)(3).

C. Such other relief as the Court deems just and proper.

1 RESPECTFULLY SUBMITTED on this January 13, 2024.

2   
3 Jason Crews  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28